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U.S. Citizenship and Immigration Services
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: MAY 20 2009

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Mari Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an instructor at Louisiana State University Health Sciences Center (LSUHSC). The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief from counsel.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now U.S. Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Commr. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We also note that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the petition on December 26, 2006. In a statement accompanying the initial filing of the petition, counsel stated:

> [The petitioner] is an expert at designing and implementing complicated medical research and/or training programs, analyzing data, and relating it back to daily practice. He is applying this expertise at the Office of Medical Education Research and Development (OMERAD) at Louisiana State University Health Sciences Center for the national field of medical and public health education and evaluation. [The petitioner's]

> research results in recommendations for programmatic changes that will make medical education safer and more effective throughout the United States.

Six witness letters accompanied the initial filing. While witnesses from several different institutions have signed these letters, there is substantial evidence of common authorship of at least portions of most of the letters. Five of the six letters, for example, contain the following passage: "[The petitioner's] unique combination of skills and expertise in both medicine and statistical analysis makes him a critical asset to the OMERAD and the medical education field, particularly in terms of assessing the effectiveness and usefulness of various approaches to teaching." Three or more letters share other identical or nearly identical passages. The language was clearly written for the witnesses, rather than by them. It would be redundant to discuss every letter, because those containing common language clearly do not represent independent perspectives.

The most detailed letter is from LSUHSC[redacted]. That letter reads, in part:

> [The petitioner's] current research focuses predominantly on medical and public health education. . . . Of particular importance, [the petitioner's] research includes specific developments and evaluative investigations of inter-professional or interdisciplinary education in the health professions in graduate and continuing education setting. . . .
>
> We were particularly fortunate to have [the petitioner] join the Office of Medical Education Research and Development (OMERAD) in 2003. . . . From the beginning he has been a major contributor and driving force in the rapid development and success of the OMERAD and the ongoing achievement of its four core purposes: 1) enhance teaching, learning, and assessment in medical education, 2) promote educational scholarship through research, collaboration, and faculty professional development, 3) facilitate educational excellence and innovation in medical education, and 4) contribute to and achieve prominence in the professional field through grantmanship, special projects, and dissemination.
>
> . . . [The petitioner's] involvement with our simulation-based educational innovations is particularly crucial. High fidelity simulation is very expensive, both in terms of equipment and facilities and the effort and expertise required to use this technology. . . .
>
> While much has been written regarding the use of human patient simulation in graduate and continuing medical education, there is considerably less in the literature regarding its use or effectiveness in medical student education. Similarly, little is known regarding the impact of such training on actual practice or . . . the transfer of learning from training to the real-life setting. . . . [The petitioner's] particular expertise in designing and implementing educational research and/or training programs in complex settings (e.g., hospitals and clinical training environments), analyzing data using both quantitative and qualitative methods, and relating results back to real-world practice make him [a] crucial member of the OMERAD and the larger medical education research community.

> . . . [The petitioner] has been instrumental in research and development targeting the use of high fidelity human patient simulation. . . . [The petitioner] has been involved directly in an ongoing longitudinal evaluation study that has facilitated ongoing improvements locally and innovation nationally. In addition . . . , he was instrumental in designing and conducting research for . . . a required core curriculum for third year medical students using high fidelity patient simulation (mannequin-based) and authentic patient scenarios in emergency and intensive care situations. . . .
>
> Through [the petitioner's] expertise, creativity, and commitment, we have accomplished an incredible amount of infrastructure and activity in medical education research. We have achieved important levels of notoriety in just three years and [the petitioner's] efforts and contributions have played a major role. . . .
>
> [I]f [the petitioner] were to leave the OMERAD, we would realize a significant decline and interruption in the breadth, depth, and pace of our scholarly work and contributions. . . . I am confident that finding someone else who is as qualified as [the petitioner] for the role and position he fills in the OMERAD is likely impossible.

[redacted] also stated: "Since the fall of 2002, we have amassed approximately 200 peer-reviewed presentations and publications. [The petitioner] has been a co-author for many of these, as reflected on his curriculum vita." The cited document lists only four articles, two already published, with the other two "in press." The document also lists 26 "technical reports." [redacted] was a co-author of all of the petitioner's listed articles and most of the reports.

The only initial witness whose letter does not appear to share significant passages with other letters is [redacted] of the University of Minnesota Medical School. Dr. [redacted] stated:

> I have known [the petitioner] for 3 years and feel that I know his work quite well. . . .
>
> I first came into contact with [the petitioner] while I was serving as the Chair of the Southern Group on Educational Affairs (SGEA). . . . [The petitioner] and his colleagues have presented significant work in the area of medical education at these meetings. I have continued to follow his important work through his presentations at both the SGEA and the Association of American Medical Colleges (AAMC). . . .
>
> [The petitioner] conducts important research evaluating medical and public health programs based on educational and statistical theories and data. . . .
>
> I am particularly impressed with [the petitioner's] work studying the use of human patient simulations, though I know that he has also done substantial work studying minimally invasive surgery simulation. . . . Our school is currently initiating projects in

> this area and the data derived from [the petitioner's] studies is crucial. He has been focused on creating and validating the use of human patient simulation, especially in terms of teamwork and patient safety. . . . Without this foundational work, the simulations designed will not be able to withstand the rigors of accreditation standards.
>
> . . . His research has already provided key recommendations for programmatic changes in medical education that will make the education process more effective.

The petitioner submitted background information about medical errors, which cause thousands of patient deaths each year. The petitioner did not submit data to show how his efforts have reduced these figures. The unrealized intent to reduce patient deaths in the future is not sufficient grounds for a national interest waiver.

Grant application documents submitted with the petition identify the petitioner's role in a particular project as that of a "Statistician," who "will supervise implementation of research activities, all aspects of data collection and management, and statistical analysis relative to the research design."

On May 15, 2006, the director issued a request for evidence, instructing the petitioner to "submit copies of any published articles by other researchers citing or otherwise recognizing your research and/or contributions." The director instructed the petitioner to establish "a past record of specific prior achievement that justifies projections of future benefit to the national interest." The director also asked the petitioner to explain how most of the initial witnesses "all came up with essentially the same wording for their recommendation letters. It appears these letters may have been scripted. Therefore, this detracts from the evidentiary weight given to these letters."

In response, counsel stated "the reliance upon citations as the sole means of determining impact . . . mischaracterizes the work of" the petitioner. The director did not state that citations are "the sole means of determining [the petitioner's] impact." The director identified citations as a means to establish the impact of the petitioner's published work. Counsel stated that the petitioner's "work and analyses are used in a variety of decision-making processes. It is in this way that [the petitioner's] work makes an impact on our nation and on his field." There should be some objective way to show how much of an impact the petitioner has made in this way. For example, if the petitioner's work has had an important impact on medical education, then the petitioner should be able to show that many medical schools around the country have adopted his methods. Purely local influence lacks the national scope required by the guidelines in *Matter of New York State Dept. of Transportation*.

With regard to the common origin of the initial witness letters, counsel stated that the witnesses needed "a level of guidance" because they are not familiar with immigration law. Regarding a specific passage quoted in the request for evidence, counsel stated: "The sentences cited to by the Service relate to the general status of health care in the United States and not to the individual work or achievements of" the petitioner. The letters, however, contain several shared passages that do relate to the petitioner's "individual work or achievements." The AAO quoted one such passage earlier in this decision.

The petitioner submitted four new witness letters, all from witnesses in Louisiana. LSU Chancellor [redacted] stated that the petitioner's work is "relied upon . . . for the purpose of changing our medical school curriculum and residents' training program." The petitioner's importance to one institution does not translate into eligibility for a national interest waiver.

[redacted], LSUHSC's Associate Dean for Academic Affairs, stated that the petitioner's "position . . . requires not only statistical knowledge and skills, but also a sound medical background and computer skills. . . . [I]t is "almost impossible to recruit Medical Doctors who are also statisticians to fill this full-time research and teaching position." The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. If the position truly requires both medical and statistical training, as [redacted] asserts, then any applicant who lacks such training is not qualified for the position. Unqualified job applicants do not result in the denial of labor certification. The petitioner has not shown why the labor certification process would displace him from his job, if other qualified workers are "almost impossible to recruit."

[redacted] stated that the petitioner "has been integral in the development of and in the teaching of our simulation-based courses." The record does not show that the petitioner has affected simulation-based courses at a broader, national level. While the initial witnesses represented many different states, none of those witnesses indicated that their own institutions had adopted the petitioner's methods. Rather, they indicated that the petitioner is important to LSUHSC's efforts.

Chief Executive Officer of the Southeast Louisiana Area Health Education Center, stated:

> [T]he issue of physician shortage in rural areas is a significant problem in Louisiana. [The petitioner's] work has been an important resource for our organization and has been invaluable as we address the concerns of improving rural health care and health care in Louisiana.
>
> [The petitioner] conducted a study concerning manpower in the health care system.

The project described by [redacted] is local in scope. Congress modified the national interest waiver statute by adding section 203(b)(2)(B)(ii) of the Act, which makes provisions for physicians practicing medicine in shortage areas. That statute, however, does not extend to individuals who aid in identifying the shortage areas.

[redacted] Senior Associate Dean of Tulane University School of Public Health and Tropical Medicine, New Orleans, Louisiana, stated that the petitioner and [redacted] "conducted large scale training needs assessments from 2003 to 2005 for individual state public health agencies in the" South Central Public Health Partnership encompassing Alabama, Arkansas, Louisiana and Mississippi. [redacted] credited the petitioner with valuable contributions, but did not indicate any direct impact outside of the "four-state consortium."

To establish the impact of his published work, the petitioner submitted copies of two articles containing citations of the article "Forecasting change in Louisiana physician age cohorts: 1994-2020," of which the petitioner was the fifth of five credited authors. One citing article, "A Survey of Subjective Sleepiness and Consequences in Attending Physicians," cited an article by the petitioner as one of three sources for the statement: "Projections already exist that suggest a deficit of physicians in the future." The other citing article, "Physician don't heal thyself: a descriptive study of impaired older doctors," cited the petitioner's article in support of the introductory assertion: "As the population ages, so too does the medical work force." There is no indication that the petitioner's cited article addressed changes in training methods. Rather, according to the article's title and the contexts in which others have cited it, the cited article is a statistical projection of the demographics of the medical profession.

On September 22, 2008, the director denied the petition, finding that the record lacks "objective documentary evidence" of the petitioner's wider impact and influence on his field. The director also noted that a labor certification should be readily obtainable in an occupation for which "it is almost impossible to recruit" qualified workers.

On appeal, counsel states that the director's "analysis . . . is formulaic and cursory at best and ignores the quality of the evidence submitted." Counsel contends that the director inappropriately required evidence of national or international acclaim, which relates to other immigrant classifications (under sections 203(b)(1)(A) and (B) of the Act) that the petitioner has not sought.

The director did not require evidence that the petitioner is at the top of his field, like an alien of extraordinary ability in the sciences under section 203(b)(1)(A) of the Act, or internationally recognized as outstanding, like an outstanding researcher under section 203(b)(1)(B) of the Act. The director properly required evidence of the petitioner's impact on his field of endeavor. The evidence submitted previously, and emphasized by counsel on appeal, attests at best to the petitioner's impact on a four-state region in the south central United States.

Counsel observes that the petitioner is named in several federal grant applications. Counsel does not explain why this is evidence of eligibility for the waiver. That LSUHSC faculty members named the petitioner in grant applications does not show or imply that the federal government has taken a particular interest in the petitioner's work as compared with others in the same field.

Counsel repeats [redacted]'s assertion that a replacement for the petitioner would be "almost impossible to recruit," but did not address the director's rebuttal of that argument. Counsel simply assumes that the labor certification process would displace the petitioner (even though no qualified replacement may exist), and asserts that replacing the petitioner "would result in significant delay and expense for LSUHSC." Counsel does not persuasively explain why this is a matter of national interest, as opposed to a matter of concern for one institution. Counsel asserts that LSUHSC's Human Simulation Center is "unique" among medical schools. If this is the case, then there is nowhere else but LSUHSC to implement the petitioner's recommendations regarding the best use of the Human Simulation Center. While it is certainly possible that other medical schools may eventually institute similar centers, the

record does not indicate that their decision on whether or not to do so depends on the petitioner's statistical analyses.

Counsel makes the undisputed assertion that "[m]edical errors can be deadly to patients," but cites no evidence to show that the petitioner's work has had any effect at all on the incidence rate of such errors at a national, regional or even local level. Counsel states only that medical simulations have the potential to reduce medical errors. This is a general statement that does not explain why the petitioner should receive an added benefit in the form of an exemption from a job offer requirement that normally applies to aliens in his field.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.